

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

MARK ANTHONY CHRISTIANS,

Plaintiff,

vs.

NANCY CHRISTENSEN, Retired Unit Manager at Mike Durfee State Prison, Individual Capacity; LAURIE STRATMAN, Unit Coordinator at Mike Durfee State Prison, Individual and Official Capacity; DARIN YOUNG, Terminated Warden at SDSP, Individual Capacity; JESSICA COOK, Associate Warden at SDSP, Individual Capacity; DEREK EKEREN, Unit Manager at Jameson, Individual and Official Capacity; JENNIFER DRIESKE, Terminated Deputy Warden at SDSP, Individual Capacity; SETH HUGHES, Unit Manager at Jameson, Individual and Official Capacity; CATHY WYNIA, Special Security at SDSP, Individual and Official Capacity; AMBER PIRRAGLIA, Official Capacity, and RICHARD JOHNSTON, Official Capacity.

Defendants.

4:22-CV-04072-LLP

ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO PROCEED IN
FORMA PAUPERIS ON APPEAL

Plaintiff, Mark Anthony Christians, an inmate in the custody of the South Dakota Department of Corrections ("DOC"), filed a pro se lawsuit under 42 U.S.C. § 1983. Doc. 1. On March 27, 2025, the Court issued a Memorandum Opinion and Order Granting Defendants' Motion for Summary Judgment and Ruling on Plaintiff's Miscellaneous Motions. Doc. 105. Plaintiff filed a notice of appeal to the United States Court of Appeals for the Eighth Circuit from the Court's March 27, 2025 Order. Doc. 107. By order dated April 18, 2025, the Court ordered Christians to pay the full \$605 appellate filing fee and directed him to move for leave to proceed

in forma pauperis on appeal and submit a certified prisoner trust account form for the last six months if he seeks to pay the appellate filing fee in installments. Doc. 114. Christians now moves for leave to proceed in forma pauperis on appeal, Doc. 124, and the Court has received his prisoner trust account report, Doc. 122.¹

Under the Prison Litigation Reform Act (“PLRA”), a prisoner who “files an appeal in forma pauperis . . . shall be required to pay the full amount of a filing fee.” 28 U.S.C. § 1915(b)(1). This obligation arises “the moment the prisoner . . . files an appeal.” *Henderson v Norris*, 129 F.3d 481, 483 (8th Cir. 1997) (per curiam) (omission in original) (quoting *In re Tyler*, 110 F.3d 528, 529–30 (8th Cir. 1997)). “[W]hen an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceeding or over a period of time under an installment plan.” *Id* (quoting *McGore v Wrigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997)). “[P]risoners who appeal judgments in civil cases must sooner or later pay the appellate filing fees in full.” *Id* (citing *Newlin v Helman*, 123 F.3d 429, 432 (7th Cir. 1997)).

In *Henderson*, the United States Court of Appeals for the Eighth Circuit outlined “the procedure to be used to assess, calculate, and collect” appellate filing fees in compliance with the PLRA. *Id* First, the court must determine whether the appeal is taken in good faith. *Id* at 485 (citing 28 U.S.C. § 1915(a)(3)). Then, so long as the prisoner has provided the court with a

¹ The Court ordered Christians to move for leave to proceed in forma pauperis on appeal and submit a certified prisoner trust account for the last six months on or before May 19, 2025, if he seeks to pay the appellate filing fee in installments. Doc. 114. Christians’ motion for leave to proceed in forma pauperis was timely deposited in his institution’s internal legal mail system on May 16, 2025. Doc. 124-2. His certified prisoner trust account form for the last six months was filed on May 21, 2025. Doc. 122. But the Defendants, not Christians, filed the certified prisoner trust account form because this Court granted Christians’ request to direct the DOC to provide a certified prisoner trust account report form and copies of his last six months of financial statements. Doc. 121. Christians’ motion seeking relief because the DOC refused to provide Christians a certified prisoner trust account form was timely deposited in his institution’s internal legal mail system on May 6, 2025. Doc. 119.

certified copy of his prisoner trust account, the court must “calculate the initial appellate partial filing fee as provided by § 1915(b)(1), or determine that the provisions of § 1915(b)(4) apply.”

Id The initial partial filing fee must be 20 percent of the greater of:

- (A) the average monthly deposits to the prisoner’s account; or
- (B) the average monthly balance in the prisoner’s account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

28 U.S.C. § 1915(b)(1).

A party permitted to proceed in forma pauperis in the district-court action may proceed in forma pauperis on appeal without further authorization unless the district court “certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis[.]” Fed. R. App. P. 24(a)(3). It appears that Christians’ appeal is taken in good faith. Christians’ prisoner trust account report shows an average monthly deposit of \$129.58 and an average monthly balance of \$365.00. Doc. 122. Based on the information in Christians’ prisoner trust account report, the Court grants Christians leave to proceed in forma pauperis on appeal, but he must pay an initial partial filing fee of \$73.00 (20 percent of his average monthly balance). Christians must pay the initial partial filing fee of **\$73.00 by June 27, 2025**.

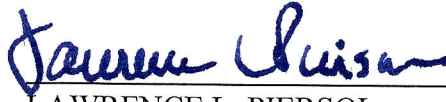
Thus, it is ORDERED:

1. That Christians’ motion for leave to proceed in forma pauperis on appeal, Doc. 124, is granted. Christians must make a payment of **\$73.00 by June 27, 2025**, made payable to the Clerk, U.S. District Court.
2. That the Clerk of Court will send a copy of this Order to the appropriate financial officer at Christians’ institution.

3. That the institution having custody of Christians is directed that whenever the amount in Christians' trust account, exclusive of funds available to him in his frozen account, exceeds \$10.00, monthly payments that equal 20 percent of the funds credited the preceding month to Christians' trust account shall be forwarded to the U.S. District Court Clerk's Office under 28 U.S.C. § 1915(b)(1), until the \$605 appellate filing fee is paid in full.

DATED this 29th day of May, 2025.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "Lawrence L. Piersol", is written over a horizontal line.

LAWRENCE L. PIERSOL
United States District Judge